

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Advanced Management Research, Inc. :
for Redetermination of a Deficiency or Revision :
of a Determination or Refund of Corporation :
Franchise Tax under Article 9A of the Tax Law for :
the Fiscal Year Ended 1/31/82. :
:

AFFIDAVIT OF MAILING

State of New York :

ss.:

County of Albany :

David Parchuck, being duly sworn, deposes and says that he is an employee of the State Tax Commission, that he is over 18 years of age, and that on the 15th day of April, 1985, he served the within notice of Decision by certified mail upon Advanced Management Research, Inc., the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Advanced Management Research, Inc.
Att: Peter D. Perry
125 Wolf Rd.
Albany, NY 12205

and by depositing same enclosed in a postpaid properly addressed wrapper in a post office under the exclusive care and custody of the United States Postal Service within the State of New York.

That deponent further says that the said addressee is the petitioner herein and that the address set forth on said wrapper is the last known address of the petitioner.

Sworn to before me this
15th day of April, 1985.

David Parchuck

Peter D. Perry

Authorized to administer oaths
pursuant to Tax Law section 174

STATE OF NEW YORK
STATE TAX COMMISSION
ALBANY, NEW YORK 12227

April 15, 1985

Advanced Management Research, Inc.
Att: Peter D. Perry
125 Wolf Rd.
Albany, NY 12205

Gentlemen:

Please take notice of the Decision of the State Tax Commission enclosed herewith.

You have now exhausted your right of review at the administrative level. Pursuant to section(s) 1090 of the Tax Law, a proceeding in court to review an adverse decision by the State Tax Commission may be instituted only under Article 78 of the Civil Practice Law and Rules, and must be commenced in the Supreme Court of the State of New York, Albany County, within 4 months from the date of this notice.

Inquiries concerning the computation of tax due or refund allowed in accordance with this decision may be addressed to:

NYS Dept. Taxation and Finance
Law Bureau - Litigation Unit
Building #9, State Campus
Albany, New York 12227
Phone # (518) 457-2070

Very truly yours,

STATE TAX COMMISSION

cc: Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
ADVANCED MANAGEMENT RESEARCH, INC. : DECISION
for Redetermination of a Deficiency or for :
Refund of Corporation Franchise Tax under :
Article 9-A of the Tax Law for the Fiscal Year :
Ended January 31, 1982. :

Petitioner, Advanced Management Research, Inc., 125 Wolf Road, Albany, New York, 12205, filed a petition for redetermination of a deficiency or for refund of corporation franchise tax under Article 9-A of the Tax Law for the fiscal year ended January 31, 1982 (File No. 41620).

A formal hearing was held before Dennis M. Galliher, Hearing Officer, at the offices of the State Tax Commission, Building 9, State Office Campus, Albany, New York on November 1, 1984 at 1:15 P.M. Petitioner appeared by its president Peter D. Perry. The Audit Division appeared by John P. Dugan, Esq. (James Della Porta, Esq., of counsel).

ISSUE

Whether petitioner was entitled to exemption from corporation franchise tax as an electing subchapter S corporation for its fiscal year ended January 31, 1982.

FINDINGS OF FACT

1. On July 7, 1982, the Audit Division issued to petitioner, Advanced Management Research, Inc. ("AMR"), a Notice and Demand for Payment of Corporation Tax Due for the fiscal year ended January 31, 1982, in the amount of \$250.00 plus interest.

2. AMR was incorporated and began doing business in New York State on February 2, 1981. AMR is engaged primarily in the business of providing data processing and management consulting services and, at present, employs approximately ten persons.

3. On or about February 7, 1981, AMR filed Form 2553 (Election by a Small Business Corporation) with the Internal Revenue Service ("I.R.S."), electing taxable status under Subchapter S of the Internal Revenue Code, which election was accepted by the I.R.S. on or about March 19, 1981.

4. AMR timely filed, on April 15, 1982, a U.S. Small Business Corporation Income Tax Return (Form 1120 S) and a State of New York Corporation Franchise Tax Report (Form CT-4) for its fiscal year ended January 31, 1982.

5. On or about April 28, 1982, AMR filed an "Election by Shareholders of a Small Business Corporation for New York State Personal Income Tax and Corporation Franchise Tax Return" (Form CT-6).

6. The deficiency at issue herein is premised upon AMR's failure to timely elect (New York) subchapter S status. AMR asserts, notwithstanding its untimely election of subchapter S status, that its Federal subchapter S election was accepted and that it in fact operated as an electing subchapter S corporation throughout the year in question.

CONCLUSIONS OF LAW

A. That Tax Law section 209.8, as in effect during the period in question, permitted shareholders of a corporation which had made an election under subchapter S of the Internal Revenue Code, to elect to be taxed under the New York State personal income tax law (Article 22), with the corporation thereby becoming exempt from corporation franchise tax (Article 9-A). This provision pertained to corporate taxable years beginning on or after January 1, 1981, and

required that every shareholder of the corporation make the election to be taxed under Article 22.

B. That Tax Law section 660(d)(3), as in effect during the period in question, provided that the aforementioned election of subchapter S treatment by the shareholders of the corporation, for any taxable year beginning on or after January 1, 1981 and ending prior to December 31, 1982, was to be made within nine months from the beginning date of such taxable year.


C. That in order for petitioner to have been exempt from corporation franchise tax, its shareholders were required to make the necessary election by filing form CT-6 within nine months of the February 2, 1981 commencement of petitioner's taxable year. Since such election was not made until on or about April 28, 1982, which is clearly beyond the statutory nine month period, the election is untimely and petitioner is not entitled to exemption from corporation franchise tax.

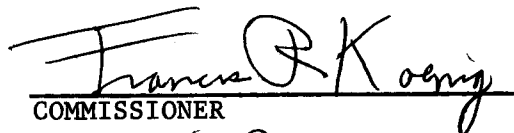
D. That the petition of Advanced Management Research, Inc. is hereby denied and the Notice and Demand dated July 7, 1982, is sustained.

DATED: Albany, New York

STATE TAX COMMISSION

APR 15 1985


PRESIDENT


COMMISSIONER


COMMISSIONER